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10/559,860	12/06/2005	Ali Nifuroshan	101663.0001US2	7437
24392 7590 09/14/2009 FISH & ASSOCIATES, PC ROBERT D. FISH 2603 Main Street Suite 1000 Irvine, CA 92614-6232				
EXAMINER				
NGUYEN, SON T				
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3643				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/559,860

**Applicant(s)**

NILFUROSHAN, ALI

**Examiner**

Son T. Nguyen

**Art Unit**

3643

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 61-68 and 70-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 61-68, 70-75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 61,63,67,70,72-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uhr (DE20021260U1) in view of Taudauchi et al. (JP410113088A), Wilson (GB2374535A) and Osborn (233275).**

For claim 61, Uhr teaches a temperature altering system, comprising: a blanket sized and dimensioned to drape over a horse; first and second pockets disposed on an underside of the blanket, each of which has a cavity that includes a removable temperature altering device. However, Uhr is silent about each pocket of which is freely positionable about the blanket using hook and loop fasteners; wherein the first pocket has a first size and the second pocket has a second size that is different from the first size; and a flap coupled to the blanket, wherein the flap includes another pocket positioned to deliver a temperature altering regimen to a stifle joint of the horse.

Taudauchi et al. teach a temperature altering system, comprising: a removable temperature altering device 21, and each of which is freely positionable about the blanket using hook and loop fasteners 32. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a removable temperature altering device, and each of which is freely positionable about the blanket

using hook and loop fasteners as taught by Taudauchi et al. in place of the preferred removable temperature altering device of Uhr in order to allow the user to move the altering device in various different locations as desired.

Wilson teaches a temperature altering system comprising a first pocket (either ref. 1 or ref. 2) having a first size and a second pocket (either ref. 1 or ref. 2) having a second size that is different from the first size (see also Abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ different size pockets as taught by Wilson in the system of Uhr in order to accommodate different sizes of the temperature altering device for different coverage area on the animal.

Osborn teaches a horse blanket comprising a leg flap (where ref. G is located at in fig. 1) being coupled to a rear portion of the blanket. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a leg flap as taught by Osborn in the blanket of Uhr in order to further secure the blanket on the horse.

Uhr as modified by Taudauchi et al., Wilson and Osborn is silent about wherein the flap includes another pocket positioned to deliver a temperature altering regimen to a stifle joint of the horse. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an additional pocket in the flap of Uhr as modified by Taudauchi et al., Wilson and Osborn, in order to provide therapy to the leg/joint area as needed. Note that it is notoriously well known to provide hot/cold pack anywhere on the body of an animal, depending on where the animal is hurting.

For claim 63, Uhr as modified by Taudauchi et al., Wilson and Osborn (emphasis on Uhr) further teaches wherein the first pocket has a flap 5 disposed to assist in keeping a corresponding one of the temperature altering devices within a cavity of the first pocket.

For claim 67, Uhr as modified by Taudauchi et al., Wilson and Osborn (emphasis on Uhr) further teaches wherein the pockets mate with a top side of the blanket (see detailed description, the pockets can be arranged on the inside or outside of the blanket).

For claim 70, Uhr as modified by Taudauchi et al., Wilson and Osborn (emphasis on Uhr) is silent about wherein the blanket further comprises a leg flap coupled to a rear portion of the blanket, and including an additional pocket.

In addition to the above, Osborn teaches a horse blanket comprising a leg flap (where refs. G & n are located at in fig. 1) being coupled to a rear portion of the blanket. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a leg flap as taught by Osborn in the blanket of Uhr as modified by Taudauchi et al. and Wilson in order to further secure the blanket on the horse.

Uhr as modified by Taudauchi et al., Wilson and Osborn is silent about an additional pocket in the flap. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an additional pocket in the flap of Uhr as modified by Taudauchi et al., Wilson and Osborn, depending on if the animal needs the temperature treatment in the leg area or not.

For claim 72, Uhr as modified by Taudauchi et al., Wilson and Osborn (emphasis on Uhr) further teaches the blanket further comprises a front end and a rear end (see fig. 1, self explanatory), wherein the front end includes a cut away portion (the curved section in the neck area of the blanket in fig. 1 of Uhr) that rests just above the withers region of the horse, wherein the rear end of the blanket covers a horse's hindquarter region (see fig.1 of Uhr, self explanatory).

For claim 73, Uhr as modified by Taudauchi et al., Wilson and Osborn further teaches wherein the first size and dimension of the first pocket is configured to contact the horse's spinal muscles. Note that the pockets of Uhr as modified by Wilson can be or are configured to contact the spinal muscles (see fig. 1 of Uhr and fig. 1 of Wilson for placement and size of the pockets covering the spinal muscles running up/down along the spinal cord).

For claim 74, Uhr as modified by Taudauchi et al., Wilson and Osborn further teaches wherein the second size and dimension of the second pocket is configured to contact at least one of the horse's shoulder and hip muscles. Note that the pockets of Uhr as modified by Wilson can be or are configured to contact the shoulder and hip muscles (see fig. 1 of Uhr and fig. 1 of Wilson for placement and size of the pockets covering the shoulder and hip muscles).

For claim 75, Uhr as modified by Taudauchi et al., Wilson and Osborn (emphasis on Uhr) further teaches wherein the blanket further comprises a row of fixed pockets positioned to deliver the temperature altering regimen to a horse's spinal muscles (see fig. 1 of Uhr).

**3. Claims 62,66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uhr as modified by Taudauchi et al., Wilson and Osborn as applied to claim 61 above, and further in view of Newman (5271211).**

For claim 62, Uhr as modified by Taudauchi et al., Wilson and Osborn is silent about wherein the underside of the blanket includes a wicking material.

Newman teaches an animal cover 24 which includes a wicking material on an underside of the cover (col. 6, lines 25-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a wicking material as taught by Newman on the underside of the blanket of Uhr as modified by Taudauchi et al., Wilson and Osborn in order to promote evaporation of perspiration away from the body of the animal (col. 6, lines 25-34 of Newman).

For claim 66, in addition to the above, Newman also teaches a temperature reflective material on the top panel 100 of the cover 24 (col. 6, lines 25-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a reflective material as taught by Newman on a side adjacent the blanket of Uhr as modified by Taudauchi et al., Wilson and Osborn in order to promote heat or sun reflectance (col. 6, lines 35-36 of Newman)

**4. Claim 64 is rejected under 35 U.S.C. 103(a) as being unpatentable over Uhr as modified by Taudauchi et al., Wilson and Osborn as applied to claim 61 above, and further in view of Fazio (6443101).**

Uhr as modified by Taudauchi et al., Wilson and Osborn is silent about wherein the first pocket has a zipper disposed to assist in keeping a corresponding one of the temperature altering devices within a cavity of the first pocket.

Fazio teaches an animal cover including a pocket 80 with zipper to close the opening 82 of the pocket. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a zipper as taught by Fazio on the pocket of Uhr as modified by Taudauchi et al., Wilson and Osborn in order to allow a user to open and close the pocket so that the temperature altering device can be removed or retained in the pockets.

**5. Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Uhr as modified by Taudauchi et al., Wilson and Osborn as applied to claim 61 above, and further in view of Beeghly et al. (5537954).**

Uhr as modified by Taudauchi et al., Wilson and Osborn is silent about wherein the first pocket has a button disposed to assist in keeping a corresponding one of the temperature altering devices within a cavity of the first pocket.

Beeghly et al. teach an animal cover having a pocket with a button 36 disposed to assist in keeping a corresponding one of the temperature altering devices within a cavity of the first pocket. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a button as taught by Beeghly et al. on the pocket of Uhr as modified by Taudauchi et al., Wilson and Osborn in order to allow a user to open and close the pocket so that the temperature altering device can be removed or retained in the pockets.



6. **Claim 68 is rejected under 35 U.S.C. 103(a) as being unpatentable over Uhr as modified by Taudauchi et al., Wilson and Osborn as applied to claim 61 above, and further in view of Schulte (DE4140507A).**

Uhr as modified by Taudauchi et al., Wilson and Osborn is silent about the temperature altering device is a series of electrically controlled heating elements.

Schulte teaches a temperature altering system comprising a series of electrically controlled heating elements 2 that can be controlled by using a thermostat 3 and a switch 5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a series of electrically controlled heating elements as taught by Schulte as the preferred temperature altering device in the blanket of Uhr as modified by Taudauchi et al., Wilson and Osborn in order to allow the user to control the temperature of the heating elements by using the thermostat and the switch.

7. **Claim 71 is rejected under 35 U.S.C. 103(a) as being unpatentable over Uhr as modified by Taudauchi et al., Wilson and Osborn as applied to claim 61 above, and further in view of Longtin (2003/0061790A1 ).**

Uhr as modified by Taudauchi et al., Wilson and Osborn is silent about wherein the blanket further comprises a detachable neck protrusion, wherein the protrusion includes an additional pocket.

Longtin teaches an animal cover comprising a detachable neck protrusion 14. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a detachable neck protrusion as taught by Longtin in the blanket of

Uhr as modified by Taudauchi et al., Wilson and Osborn in order to cover the neck area of the animal.

Uhr as modified by Taudauchi et al., Wilson, Osborn and Longtin is silent about an additional pocket in the neck protrusion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an additional pocket in the neck protrusion of Uhr as modified by Taudauchi et al., Wilson, Osborn and Longtin, depending on if the animal needs the temperature treatment in the neck area or not.

***Response to Arguments***

8. Applicant's arguments with respect to claims 61-68,70-74 have been considered but are moot in view of the new ground(s) of rejection. However, certain arguments will be addressed herein.

**Applicant argued that each of Tadauchi and Wilson convey to one of ordinary skill in the art that they have completely solved their respective problems, and one of ordinary skill in the art would not have been motivated to combine the two solutions. Wilson's device apparently works just fine, without freely positionable pockets, since one could select one of the many fixed pockets for the desired target area. And Tadauchi's device also works just fine without using pockets with varying sizes, since a user can place multiple heating or cooling pockets at the desired target area.**

Tadauchi and Wilson are not combined with each other for the same solution. Clearly from the rejection above, Uhr teaches a temperature altering system,

comprising: a blanket sized and dimensioned to drape over a horse; first and second pockets disposed on an underside of the blanket, each of which has a cavity that includes a removable temperature altering device. However, Uhr is silent about each pocket of which is freely positionable about the blanket using hook and loop fasteners; wherein the first pocket has a first size and the second pocket has a second size that is different from the first size; and a flap coupled to the blanket, wherein the flap includes another pocket positioned to deliver a temperature altering regimen to a stifle joint of the horse.

Taudauchi et al. teach a temperature altering system, comprising: a removable temperature altering device 21, and each of which is freely positionable about the blanket using hook and loop fasteners 32. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a removable temperature altering device, and each of which is freely positionable about the blanket using hook and loop fasteners as taught by Taudauchi et al. in place of the preferred removable temperature altering device of Uhr in order to allow the user to move the altering device in various different locations as desired.

Wilson teaches a temperature altering system comprising a first pocket (either ref. 1 or ref. 2) having a first size and a second pocket (either ref. 1 or ref. 2) having a second size that is different from the first size (see also Abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ different size pockets as taught by Wilson in the system of Uhr in order to

accommodate different sizes of the temperature altering device for different coverage area on the animal.

The claimed invention does not include any new concept, especially in the art of treating injuries for an animal (human or non-human). To place hot/cold packs in pockets with hook and loop where the animal hurts is not a new concept. It is rather very old concept and very much common sense to do so.

**Applicant argued that none of Uhr, Tadauchi, and Wilson provide any teaching, suggestion, or motivation to one of ordinary skill in the art to utilize a flap that includes an third pocket positioned to deliver a temperature altering regimen to a stifle joint of the horse.**

Again, placing hot/cold packs in pockets with hook and loop where the animal hurts is not a new concept. It is rather very old concept and very much common sense to do so. If the animal hurts at its stifle joint, then, one of ordinary skill in the art would want to place the temperature altering device at the area of the stifle joint, and not, say, at the shoulder area. This is common sense deduction and it is nothing new.

**Applicant argued that, by providing declaration under 37 C.F.R. 1.132 with evidence the commercial success, the prior arts used in the rejection have been overcome.**

The Examiner has acknowledged the declarations, however, the Examiner finds the declaration non-persuasive and insufficient. The Knowlton and the Meyer are merely customers' satisfaction in using the present invention's blanket and not evidence as

required by commercial success. MPEP 716.03(a)-(b) commercial success does not list customer satisfaction as an evidence for commercial success.

As for the Bello declaration, again, the declaration appears to be more of an opinion of the assignee as to purchasers' reason for buying the product, and not a nexus between the sales and the claimed invention. In addition, the declaration failed to provide a description of the relevant market for the product including advertising. Moreover, sales results were provided in numeral 5, page 3 of the declaration; however, the sales results lack total sales for competing products in the market, indication of differences between these products and the applicant's, total sales for products embodying the invention, and pricing of the various products as required by MPEP 716.03(a)-(b). By merely stating the number of volume sold (units) to certain customers does not show commercial success. Gross sales figures do not show commercial success absent evidence as to market share. The declaration also attempted to claim long-felt need (page 3, numeral 3, part (d)); however, again, merely stating long-felt need is insufficient. Showing of long-felt need should include evidence as listed in MPEP 716.04, to which Applicant has not provided any such evidence.

In conclusion, based on the insufficiency of the declarations and non-persuasive argument, the Examiner does not believe the arguments overcame the prior art of rejection. In addition, the inventive concept of the present invention is nothing new in the art of treating injury for an animal (human or non-human) because having a temperature altering device (i.e. hot/cold pack) be placed in a pocket with hook and loop fasteners so as to allow the hot/cold pack to be placed in various location is clearly taught in the

references as cited above, especially Tadauchi. Although Tadauchi teaches the hot/cold pack for the head of the horse, the bottom line is that his hot/cold pack is in a pocket with hook and loop fasteners to allow a user to place the hot/cold pack at various location on the animal (such as the head) as desired, which really is the inventive concept of Applicant. One of ordinary skill in the art studying Taduachi would apply his teaching to the blanket with temperature altering device as taught by Uhr so as to allow the user the option to move the temperature altering device as desired where the animal needs therapy.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son T. Nguyen/  
Primary Examiner, Art Unit 3643